

# From effective to efficient regulation of ICT: time to build the backbone of information technology legislation

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**It is high time for ICT regulation to make that decisive step and build on the knowledge gathered so far in order to acquire that essential element every major field of law has, i.e. generic laws and principles that serve as the backbone of a body of legislation.**

It is commonly accepted that, in general, [ICT technology develops more quickly than laws](#). Simultaneously, the range of applications developed with the use of ICT is so wide that a lot of novel situations calling for regulatory arrangement show up at an accelerating pace. As a result, there is a growing demand for specialized legislation dealing with these applications and the issues they raise. It would be unfair not to recognize that considerable progress has already been achieved and that modern jurisdictions, to a certain extent, [manage to provide answers to the regulatory questions that arise out of the vast range of technological applications at an ever more satisfactory pace](#). However, as the types of ICT applications are amplified further, apart from the range of laws required, our experience with regulating information technology affairs also accretes.

[Legal theorists have been differentiating ICT laws so far between technology-neutral and technology-specific](#). The latter refer to laws that have been developed having in mind the precise needs caused by the emergence of a new ICT application or protocol; in other words, a law devised following careful observation of an already present technological phenomenon calling for legal handling. On the contrary, by the term 'technology-neutral' reference is made to laws that deal with ICT phenomena in a broader, technology-unbound manner, in an effort to remain valid as long as possible, unaffected by technological developments.

[One of the most reasonable requirements is that ICT laws should be sustainable enough to cope with technological development over a sufficiently long period of time.](#) If a law is too technology-specific, it is not likely to cover future technological developments; therefore, it will have to be adapted sooner rather than later. However, it is also true that having ICT laws which tend to be entirely technology-neutral is not the way to strike the desired balance and offer essential legal certainty in the field of ICT regulation. Based on what has been argued so far, it can be claimed that ICT laws have become crucially more effective in catching up with the pace at which new technological phenomena arise, improving in clarity and specificity to contribute to the sentiment of legal certainty every law subject continuously seeks. Additionally, there has been a considerable growth in the overall amount of ICT laws making the field able to stand as a separate legal sector. Since effectiveness has been largely achieved, it is time to focus on efficiency, i.e. on those elements that will permit deep and genuine consolidation and correlation among the various technology-specific laws that comprise the body of ICT legislation. Mutatis mutandis one could argue that those elements that would contribute to ICT laws becoming more efficient and not just effective are the respective basic laws existing in every traditional independent legal sector; for instance, the civil code in civil law, the constitution in constitutional law, the general principles in international public law etc.

## **How could basic laws for ICT develop and differentiate from technology-specific laws?**

In order for ICT law to become more efficient we need to focus on discerning between the end applications of ICT (each of which calls for regulation of the specific issues it raises and, therefore, usually needs a technology-specific set of rules) and the fundamental elements that comprise the ICT landscape at any given time, i.e. the core technologies behind it, the principles upon which it is built, the standard roles and actors that take up the various tasks necessary for the functioning of the ICT environment etc.

[Basic laws need to be constructed with a primary focus on mid- to long-term viability,](#) in the same manner as basic laws in traditional independent branches of law. Of course, the longevity of basic laws in ICT may be shorter than in other sectors, given the speed at which the ICT landscape is evolving. However, with such basic laws on core elements and concepts of ICT, we can expect that:

1. Legal vacuums will be minimized: it is expected that we will have fewer situations where purely original ICT applications pose legal questions that cannot be settled with any of the existing laws, causing uncertainty and insecurity for citizens, consumers and other actors affected by them.
2. The time needed for the production or modernization of technology-specific laws will be shortened: it is reasonable to expect that when a new technological application or phenomenon surfaces and creates novel situations that necessitate the production of a new or the modernization of an existing law, the time needed for this process will be shorter, provided commonly accepted regulatory principles are codified.

3. Better chances for trans-jurisdictional certainty over ICT disputes: to the extent that the basic laws governing core constituents of ICT will be based on the universal knowledge and technical background of the field, they will facilitate communication among different jurisdictions further consolidating the way ICT legal questions are handled on a transborder basis.

## **The main goal: make ICT laws more transparent for all**

[A decisive element for any system of laws is transparency.](#) Distinguishing between basic and technology-specific laws can decisively boost this quest for transparency on all levels and towards all directions. Specifically,

- From the perspective of service and application providers: it will be clearer for those wishing to be active in the field of ICT on which minimum conditions and criteria they can actually operate. All those wishing to put on offer services and applications built with the tools and protocols available by ICT at any given time will have a clearer idea about the minimum rules they have to abide by for their offering to meet legal standards.
- From the perspective of further technical development of the ICT: On the one hand, IT pioneers will have a clear idea of the minimum standards they need to observe when developing technology further. On the other hand, even when a fundamentally novel technology is made available, basic laws and codified principles will serve as a preliminary set of governing rules for its uses, until the necessary specified laws are produced.
- From the perspective of consumers/users of end ICT services and applications: On the one side, basic laws will decrease the chances for legal vacuums in the face of rapid technological evolution. On the other side, specific laws will be able to continue developing independently each time there is need for them – but without the haste currently observed as a result of the lack of basic laws that can provide interim answers until specific laws are solidified. Additionally, future specific laws will have a point of reference in basic laws and, consequently, the ICT regulatory landscape will have better continuity.

In conclusion, although the debate so far has been whether ICT laws should be technology-neutral or technology-specific, this is not a matter of choice between the two. On the contrary, both types of ICT regulations are necessary. Technology-neutral laws are needed to serve as the basic laws and principles of the ICT sector. And technology-specific ones will be ensuring the highly desirable clarity that users of any specific ICT service or application need in order to continue using it. It is high time we build on all the progress and know-how in order for the domain of ICT law to take the big leap from the status quo of an ever growing, interrelated but not systematized body of rules into a codified, solid and coherent legal domain, with the efficiency and sovereignty any distinct legal sector should be characterized of.